[JOINT COMMITTEE PRINT]

DESCRIPTION OF H.R. 3904

(As reported by the Committee on Education and Labor)

RELATING TO

MULTIEMPLOYER PENSION PLAN AMENDMENTS

SCHEDULED FOR A HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS

ON FEBRUARY 19, 1980

PREPARED FOR THE USE OF THE

COMMITTEE ON WAYS AND MEANS

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

FEBRUARY 18, 1980

U.S. GOVERNMENT PRINTING OFFICE

57-668 O WASHINGTON : 1980 JCS-3-80

CONTENTS
1
2
3

CONTENTS

CONTENTS
1
2
3

INTRODUCTION

The Committee on Ways and Means has scheduled a public hearing on H.R. 3904 (relating to multiemployer pension plans) on February 19, 1980. The bill has been jointly referred to the Committee on Ways and Means and the Committee on Education and Labor. H.R. 3904 was ordered reported with amendments by the Committee on Education and Labor on January 30, 1980, after being marked up by the Subcommittee on Labor-Management Relations on December 13, 1979.

In connection with the Ways and Means Committee hearing on February 19, the staff of the Joint Committee on Taxation has prepared a description of H.R. 3904 as amended by the Education and Labor Committee. The first part of the pamphlet is a summary. This is followed by a more detailed explanation of the provisions of the bill, including an indication of present law treatment as well as estimated revenue effects.

The explanation of provisions is based upon materials made available to the staff of the Joint Committee on Taxation as of January 30, 1980. It is understood, however, that technical changes are being made to the bill by the staff of the Committee on Education and Labor as authorized by that Committee. Accordingly, the provisions of the bill as explained in this pamphlet may differ from the provisions of the bill as intended by the Committee on Education and Labor.

CONTENTS
1
2
3

I. SUMMARY

The Employee Retirement Income Security Act of 1974 (ERISA) established a program of insurance for employee benefits under most tax-qualified, private, domestic, defined benefit pension plans.[1] The program is administered by the Pension Benefit Guaranty Corporation (PBGC), a corporation within the Department of Labor. The Board of Directors of the PBGC consists of the Secretary of Labor (Chairman), the Secretary of the Treasury, and the Secretary of Commerce.

The PBGC maintains a trust fund and a revolving fund for insurance of benefits under terminated multiemployer defined benefit pension plans (multiemployer plans), as well as a trust fund and a revolving fund for insurance of benefits under other terminated defined benefit pension plans (usually referred to as "single-employer plans").

The insurance program (referred to as "termination insurance") is funded by (1) premiums paid by plans, (2) assets of plans that have terminated with insufficient funds to provide insured benefits, (3) payments by employers who maintained plans which terminated with insufficient funds to provide insured benefits, and (4) earnings on investments.

Under present law, the guarantee by the PBGC of benefits under a multiemployer plan is within the discretion of the PBGC until April 30, 1980. Beginning on May 1, 1980, the guarantee of these benefits becomes mandatory.

The bill (H.R. 3904), as approved by the House Committee on Education and Labor, would provide a new definition for the term "multiemployer plan," impose liability for unfunded benefits upon employers who withdraw from a multiemployer plan and allow a deduction for payments of the liability, permit multiemployer plans in financial distress to reduce benefits for workers, retirees, and beneficiaries, impose new funding requirements for multiemployer plans, provide new rules for mergers and transfers of assets involving multiemployer plans, authorize the PBGC to provide financial assistance to insolvent multiemployer plans, and provide new enforcement powers for the PBGC. In addition, the bill would increase premiums payable to the PBGC by multiemployer plans, make insurance of basic benefits under multiemployer plans by the PBGC mandatory but reduce the level of plan benefits guaranteed by the PBGC, and modify the rules relating to employer liability to the PBGC in the event of the insolvency of a multiemployer plan. The amendments made by the bill generally would be effective upon enactment.

---

[1] See ERISA sec. 4021. A defined benefit pension plan provides a specified level of benefits for participants (e.g., the Federal Civil Service Retirement plan). A church pension is generally exempt from the insurance program unless the plan has elected to be subject to ERISA standards. Also, plans of certain professional service employers are excluded from the program.

II. PRESENT LAW AND EXPLANATION OF PROVISIONS

A. Findings and Declaration of Policy (Sec. 3 of the Bill)

The policy of the bill, as declared therein, is to make specified changes in the pension rules applicable to multiemployer plans (1) to protect the interests of participants and beneficiaries in financially distressed multiemployer plans, and (2) to encourage the growth and maintenance of multiemployer plans.

B. Definition of Multiemployer Plan (Secs. 206 and 302 of the Bill, Sec. 414(f) of the Code, and Sec. 3(37) of ERISA)

Present law

Under present law, a plan is a multiemployer plan for a year if (1) more than one employer is required to contribute to the plan, (2) the plan is maintained pursuant to a collective bargaining agreement between employee representatives and more than one employer, (3) the amount of contributions made under the plan for the year by each employer is less than 50 percent of the aggregate employer contributions for that year (unless a special rule is satisfied), (4) benefits under the plan are payable to each participant without regard to the cessation of contributions by the employer of the participant except to the extent the benefits accrued because of service with the employer before the employer was required to contribute to the plan, and (5) the plan satisfies other requirements imposed by Labor Department regulations.

All corporations, which are members of a controlled group of corporations, are treated as a single employer in determining the status of a plan as a multiemployer plan.

Explanation of provisions

Under the bill, the test relating to proportionate employer contributions (the 50-percent test) and the test relating to continuity of benefits in the event of a cessation of employer contributions would be deleted. The bill would provide that all trades and businesses (whether or not incorporated) under common control would be considered a single employer for purposes of testing the status of a plan as a multiemployer plan. In addition, the bill would provide that a plan continues to be a multiemployer plan after its termination if it was a multiemployer plan for the plan year ending before its termination date.

Effective date

The provision would apply upon enactment except that the present law definition would be continued for plan years beginning before enactment.

C. Multiemployer Guarantees; Aggregate Limit on Guarantees (Sec. 102 of the Bill and Secs. 4022A and 4022B of ERISA)

Present law

Since ERISA was enacted in 1974, the insurance of employee benefits under terminated multiemployer plans has been discretionary with the PBGC. Under present law, such insurance by the PBGC will become mandatory after April 30, 1980. Only basic benefits are presently eligible for the PBGC insurance. The basic benefits under a plan are the participants' monthly nonforfeitable retirement benefits (excluding supplementary benefits, for example, subsidized early retirement benefits) under the multiemployer plan determined before the plan terminates. Basic benefits may be guaranteed by the PBGC only to the extent of the lesser of (1) a participant's average monthly gross income from the employer during the five consecutive years for which the participant's gross earnings from the employer are the highest, or (2) $750, adjusted for inflation since 1974 ($1,159.09 for 1980).[1] The guarantee of benefits which have been in effect for fewer than 60 months at the time of plan termination, and of benefit increases within 60 months before plan termination, is generally phased in at the rate of 20 percent per year or $20 per month (if greater) for each year (not in excess of 5) the plan or benefit increase has been in effect. No guarantee is provided for benefits established or increased during the 60-month period unless the PBGC finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining payments under the termination insurance program.[2]

As indicated, in the case of a multiemployer plan which terminates after the effective date of the insurance program but before May 1, 1980, benefits are insured (up to the usual limits) only in the discretion of the PBGC. In order for the PBGC to pay benefits under such a plan, (1) the plan must have been maintained during the full 60-month period preceding termination, and (2) the PBGC must determine that payment of the benefits will not jeopardize the payment of guaranteed benefits under plans which may terminate after April 30, 1980.[3]

Benefits under single employer plans are insured by the PBGC subject to the same benefit limits that apply to multiemployer plans. For single-employer plans, however, the insurance is automatic and does not depend upon the exercise of discretion by the PBGC as to whether plan benefits should be insured.[4]

Multiemployer plans pay an annual per-participant premium of $.50 for termination insurance. The annual, per-participant premium

---

[1] See ERISA sec. 4022(b)(3).
[2] See ERISA sec. 4022(b)(8).
[3] See ERISA sec. 4082(c)(2).
[4] See ERISA sec. 4022 and 4082(a) and (b).

for single-employer plans is $2.60. Premiums may be increased by the PBGC with Congressional approval.

Explanation of provisions

Duration of benefit

Under the bill, benefits (or benefit increases) in effect under a plan for fewer than 60 months before plan termination would not be guaranteed. Also, a benefit (or benefit increase) in effect for fewer than 60 months before the first day of a plan year in which a plan amendment reducing benefits (as permitted under the bill (see E. Employer Withdrawal Liability, *Explanation of provisions—Reorganization. F. Adjustments in accrued benefits*)) would not be guaranteed. For purposes of the 60-month test, (1) the date a benefit (or benefit increase) is first in effect is the later of the date the relevant documents are executed or the effective date of the benefit or benefit increase; (2) the time a benefit (or benefit increase) is in effect under a successor plan includes the time the benefit (or benefit increase) was in effect under a previously established plan; and (3) the 60-month period does not begin before the date the benefit guarantee provisions of ERISA first applied to the plan (September 2, 1974, for plans in existence on that date).

Level of guarantee

Generally, for each year of credited service under a multiemployer plan, the bill would limit the maximum guarantee for monthly base benefits to 100 percent of the first $5 of benefit accrual plus 70 percent [5] of the product of the lesser of $15 or the employee's accrual rate for monthly base benefits in excess of $5. The bill limits base benefits to retirement benefits which are otherwise subject to guarantee and which (1) are not greater than the plan benefit payable at normal retirement age as a life annuity (determined under PBGC regulations) and (2) are determined without regard to accrued benefit reductions permitted by the bill to be made on account of the cessation of contributions by an employer (see L. Minimum Vesting Requirements). Also, the bill provides that the accrual rate for base benefits is computed by dividing a participant's base benefit by the number of years of service credited to the participant under the plan for benefit accrual purposes (including years of past service taken into account, but without regard to years excluded because of the cessation of contributions by an employer (as permitted by the bill)). Where a benefit has been reduced because of the cessation of employer contributions as permitted by the bill, the guaranteed level of benefit is either the benefit determined as described above or the reduced benefit, whichever is less. In addition, the bill provides that benefits for a substantial owner under a multiemployer plan are not guaranteed if they would not be guaranteed under a single employer plan.

---

[5] The percentage is reduced to 60 percent in the case of a multiemployer plan which becomes insolvent before the year 2000 if the plan does not establish to the satisfaction of the PBGC that, for the last plan year beginning before 1976 and for the nine preceding plan years, the aggregate employer contributions to the plan were at least equal to the sum of (1) the normal cost for the plan year; and (2) interest on the amount of the unfunded past service liability as of the beginning of the plan year.

Revised premium—guarantee schedules

The bill would provide that not later than five years after enactment, and every fifth year thereafter, the PBGC is to report to the Congress on the level of premiums under multiemployer plans needed to maintain the basic benefit guarantees then in effect and whether those guarantees can be increased without increasing multiemployer plan premiums for basic benefits. If the report indicates that increased premiums are necessary to support the guarantee levels in effect, the PBGC would be required to submit to the Congress (1) a revised guarantee schedule that would be necessary if an increased premium is not adopted, (2) a revised schedule of basic-benefit premiums required if basic-benefit guarantees are not revised, and (3) a revised schedule of premiums and a revised schedule of guarantees under which the premium rates are higher than the existing rates but lower than the rates needed to support the existing schedule of guarantees. The report and any proposed revised premium and guarantee schedules would be submitted to the Committee on Ways and Means and the Committee in Education and Labor of the House, and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of any calendar year in which Congressional action is requested. The revised guarantee schedule consistent with existing premiums would go into effect on the first day of the second calendar year following submission to the Congress if the Congress does not approve the premium increase or one of the other two revised schedules by a concurrent resolution.

If a report indicates that a higher level of guarantees can be supported by the premium level in effect, the PBGC would be required to prepare an analysis showing (1) reduced premiums consistent with existing guarantees, and (2) increased guarantees consistent with existing premiums, and to submit both revised schedules as proposals to the specified committees. If the Congress approves one of the proposed schedules by a concurrent resolution, that schedule would go into effect. The bill continues the rules of the House and Senate for consideration of a concurrent resolution approving an increase in the guarantee limits for basic benefits.

Other benefits

The PBGC would be authorized to guarantee benefits under multiemployer plans other than basic benefits, if feasible, subject to terms and conditions specified by the PBGC. Under the bill, within 18 months after enactment, the PBGC would also be required to propose regulations to guarantee benefits (referred to as supplemental benefits) that would be base benefits except for the dollar or percentage limits provided by the bill, subject to terms and conditions specified by the PBGC. Benefits under a plan other than basic benefits would be guaranteed only if the plan elected to have such benefits guaranteed.

Aggregate limit on benefits guaranteed

The bill would limit the aggregate benefit provided by the PBGC with respect to any participant to the same level provided by present law except that, under PBGC regulations, financial assistance provided by the PBGC to a plan (see E. Employer Withdrawal Liability, *Explanation of provisions—Reorganization, 9. Financial assistance*) would be taken into account as a benefit provided by the PBGC to plan participants.

Effective date

Generally, these provisions would apply as of the date of enactment. The bill provides, however, that the level of benefits guaranteed under the termination insurance program for multiemployer plans which have already terminated and which are being paid by the PBGC are not to be less than the new levels provided by the bill for multiemployer plans.

D. Termination of Multiemployer Plans (Sec. 103 of the Bill and Sec. 4041A of ERISA)

Present law

Under present law, the time at which a plan terminates for purposes of termination insurance, is generally determined by the responsible officials of the plan.[1] However, ERISA provides a procedure under which the PBGC may institute proceedings to terminate a plan.[2]

Explanation of provisions

Time of termination

The bill would provide new rules for determining the date on which a multiemployer plan terminates. Under the bill, in the case of (1) the adoption (after the effective date of the bill) of a plan amendment that provides that participants will receive no credit for any purpose for service with an employer after the later of the date the amendment is adopted, or the date the plan amendment is effective, or (2) the adoption of an amendment which causes a plan to become a defined contribution plan, the plan is considered to be terminated on the later of the date the amendment is adopted or the date the amendment is effective. In addition, under the bill, a plan from which every employer has withdrawn is considered terminated on the earlier of (1) the date the last employer withdrew, or (2) the first day of the first plan year for which no employer contributions were made under the plan.

Benefit payments

Upon termination of a multiemployer plan, the bill generally would require the plan administrator to (1) limit benefit payments to vested benefits as of the date of termination, and (2) limit benefit payments to annuities (except for lump sum death benefits and lump sum benefit payments of $1,750 or less), unless the plan distributes its assets in satisfaction of all vested benefits. The bill also would require the plan administrator to reduce or suspend benefit payments as provided for by the bill (see E. Employer Withdrawal Liability, *Explanation of provisions—Reorganization, 10. Benefits under certain terminated plans*).

Employer contributions

The bill would require that employers who continue to maintain a terminated plan continue to make contributions to the plan at a rate not less than the highest rate applicable during the plan year ending on or before the date of termination. Before plan termination un-

---

[1] See ERISA secs. 4041 and 4048.
[2] See ERISA secs. 4042 and 4048.

less the PBGC approves a reduction. This provision would not apply, of course, where all employers have withdrawn from a multiemployer plan.

Reports

The bill would authorize the PBGC to prescribe such reporting requirements for, and rules for administration of, terminated multiemployer plans as the PBGC deems necessary to protect the interests of plan participants or to prevent unreasonable losses to the PBGC.

Effective date

These provisions of the bill would apply on the date of enactment.

E. Employer Withdrawal Liability, Etc. (Sec. 104 of the Bill, Secs. 411 and 412 of the Code, and Secs. 4201–4203, 4221–4224, 4241–4245, 4261, 4281, 4301 and 4302 of ERISA)

Present law

Employer liability

Under present law, if an employer maintained or contributed to a multiemployer plan (or other plan to which more than one employer contributes) during the 5-year period preceding the termination of the plan, and if the plan terminates with insufficient assets to provide benefits at the level guaranteed by the PBGC, the employer is liable to the PBGC for a share of the insufficiency. The insufficiency is generally allocated to employers on the basis of each employer's proportionate share of the total contributions required under the plan during the 5-year period. The liability of any particular employer, however, is limited to 30 percent of that employer's net worth (before taking the liability to the PBGC into account).[1] In addition, if a "substantial employer" withdraws from a plan to which more than one employer contributes, the employer is required to pay to the PBGC (or to post a bond for payment of) an amount equal to that employer's share of the insufficiency which would arise if the plan were to terminate. The payment is returned to the employer (or the bond is cancelled) if the plan does not terminate within 5 years after the withdrawal. Under present law, an employer is a substantial employer for a plan year if the employer's contributions during (1) each of the two preceding plan years, or (2) both the second and third preceding plan years were at least equal to 10 percent of the total contributions paid to the plan for each of such years.[2]

In the case of a plan to which only one employer contributes, liability for an insufficiency is allocated in full to that employer, subject to the "30 percent of net worth" limit. The substantial employer rules do not apply in such a case.[3]

Mergers and acquisitions

Under the Code and under the nontax provisions of ERISA, a plan is not permitted to merge or consolidate with, or transfer its assets or liabilities to, another plan unless certain conditions are met. The applicable conditions require that the benefits which each participant in the plan would receive if the plan were to terminate immediately after the merger, etc., will not be less than the benefits the participant would receive under the merged plan if that plan terminated immediately before the merger, etc.

---

[1] See ERISA secs. 4062 and 4064.
[2] See ERISA secs. 4001 (a) (2) and 4063.
[3] See ERISA sec. 4062.

In the case of a multiemployer plan, the merger, etc. rule is applicable only to the extent determined by the PBGC. Thus far, the PBGC has not prescribed rules for determining the extent to which the merger, etc., rules are applicable to multiemployer plans.

Explanation of provisions

In general

Under the bill, an employer who withdraws from a multiemployer plan generally would be liable to the plan for the portion of the plan's unfunded benefit obligations (if any) assigned to the employer.

The bill would provide four alternative methods, any of which a plan could consistently use to determine this liability. In addition, a plan could devise its own method of computation subject to the approval of the PBGC.

Definition of withdrawal

1. Complete withdrawal

The bill would treat an employer as withdrawing from a multiemployer plan when the employer (1) permanently ceases to have an obligation to contribute under the plan, or (2) permanently ceases all covered operations under the plan. A withdrawal would not occur, however, where an employer ceases to exist by reason of a change in form or structure, as long as the employer is replaced by a successor employer and there is no interruption in the employer's contributions to the plan or the employer's obligations under the plan. In addition, a withdrawal would not take place merely because an employer suspends making plan contributions during a labor dispute which involves its employees.

Where a withdrawal occurs because of a cessation of operations, the date of the withdrawal would generally be the date the cessation begins. However, where no contribution to the plan is made by the employer for the plan year in which the cessation takes place, the withdrawal would be deemed to occur on the last day of the preceding plan year.

2. Partial withdrawal

Under the bill, an employer would become subject to withdrawal liability in the event of a partial withdrawal; that is, where the employer neither ceases to have an obligation to contribute under the plan nor permanently ceases all covered operations under the plan. Under the bill, a partial withdrawal would arise because of the occurrence of any of one of several specified events which could significantly decrease the employer's obligations under the plan. Under the bill, a partial withdrawal would occur—

(1) if the contributions which the employer is required to make under the plan for the plan year are less than 40 percent of the contributions which the employer was obligated to make under the plan for any of the preceding three plan years (after taking into account adjustments for changes in the contribution rate);

(2) if, because the employer ceased substantially all of its covered operations at one or more facilities during a five-year period, the employer's contributions to the plan for the plan year (adjusted for changes in the contribution rate) amount to less than

75 percent of the employer's required contributions under the plan for any of the preceding five plan years; or

(3) if an employer who is required to contribute to a plan under several collective bargaining agreements ceases to have an obligation to contribute under at least one of the agreements but continues to have an obligation to contribute to the plan.

The liability which an employer incurs in the case of a partial withdrawal is to be a pro rata portion of the liability which the employer would incur in the event of a complete withdrawal on the same date, determined in accordance with PBGC regulations. While a plan, subject to PBGC approval, would generally be permitted to devise its own formula for determining withdrawal liability, the bill would provide that a plan may not eliminate the obligation for withdrawal liability in the case of a partial withdrawal of an employer who is responsible for more than two percent of the contributions to the plan, except in accordance with PBGC regulations.

Whenever an event giving rise to a partial withdrawal occurs, the date of the partial withdrawal would be the last day of the plan year in which the event takes place.

3. Construction etc., industry exception

In the case of certain plans under which an employer has an obligation to contribute for work performed in the building and construction industry, a withdrawal is considered to take place only if an employer (1) ceases to have an obligation to contribute under the plan, and (2) continues to perform work in the same geographic area, of the type for which contributions were previously required. For purposes of this rule, if an employer initially does not continue to perform work in the geographic area but resumes work there within five years after the date its obligation to contribute under the plan ceased without renewing such obligation, the employer would be considered as continuing to perform work in the geographic area if, when the employer resumes work, (1) other employers have an obligation to contribute under the plan, and (2) the plan would have permitted the employer to contribute.

An employer contributing to a plan is subject to these special rules only if (1) the plan covers primarily employees in the building and construction industry, or (2) the plan is amended to provide that the rules apply to employers with an obligation to contribute for work performed in the building and construction industry where substantially all their employees perform work in that industry.

The partial withdrawal rules apply to an employer subject to the special building and construction industry rules only where the employer so substantially reduces its involvement with a plan that the employer's continuing obligation to make contributions is for only a token or insubstantial portion of its work of the type for which contributions to the plan are required in the craft and area jurisdiction of the relevant collective bargaining agreement. Similar rules would apply to multiemployer plans in the entertainment industry.

4. De minimis rule

In any case where the withdrawal liability of an employer would be less than the greater of (a) $25,000, or (b) 0.75 percent of the plan's

57-668 O - 80 - 2

unfunded benefit obligations determined as of the close of the plan year immediately preceding the withdrawal, the bill would not impose any withdrawal liability on the employer. A plan could provide, however, for a lower *de minimus* amount or for no *de minimis* amount.

The *de minimus* rules under the bill would not apply to an employer who withdraws from a plan in a plan year in which substantially all employers withdraw, or to an employer who withdraws under an agreement or arrangement under which substantially all employers withdraw from the plan in one or more plan years. Where substantially all employers withdraw from a plan within a three-year period, it would be presumed that such an agreement or arrangement exists unless the contrary is shown by a clear preponderance of the evidence.

5. Exception for new employers

The bill would provide a rule under which an employer first entering a plan would not be subject to withdrawal liability, either in the case of a complete withdrawal or a partial withdrawal, if certain conditions are met. The applicable conditions are as follows:

a. The employer was first obligated to make plan contributions after the date of enactment;

b. the employer was not required to make plan contributions for more than six consecutive full plan years preceding the date of withdrawal;

c. for each plan year for which contributions by the employer were required, the required contributions were less than 2% of all employer contributions to the plan for the plan year;

d. the plan does not cover primarily employees in the building and construction industry; and

e. the employer did not previously have the benefits of this exception.

In addition, the exception would apply only if (1) the plan is amended to provide for its application and the plan provides that benefits of participants accrued on the basis of service before the employer was required to contribute to the plan will not be payable if the employer ceases contributions to the plan and (2) the ratio of plan assets to benefit payments during the plan year preceding the first plan year for which the employer was required to make plan contributions was at least 8 to 1.

Computation of withdrawal liability

1. Basic method

The basic method for computing withdrawal liability would draw a distinction between employers who contributed to a plan for a plan year ending before February 28, 1979, and employers who did not contribute to a plan for such a year. As to employers which contributed to a plan for such a year the bill would compute withdrawal liability (1) with respect to the unfunded benefit obligations of the plan attributable to those years, as well as (2) with respect to changes in the unfunded benefit obligations of the plan for plan years ending after February 27, 1979, in which the employer was required to contribute to the plan. In the case of an employer who was not required to contribute to the plan for a plan year ending before February 28, 1979, the employer's withdrawal liability would be computed solely with reference to changes in the unfunded benefit obligations under the plan in plan years ending after February 27, 1979, in which the employer was required to contribute to the plan. The basic method would apply unless a plan adopts one of the alternative methods.

In particular, withdrawal liability under the basic method would be divided into two parts, as follows:

(1) liability with respect to changes in benefit obligations for plan years ending after February 27, 1979 in which the employer was obligated to contribute under the plan; and

(2) liability with respect to benefit obligations for plan years ending before February 28, 1979.

In the case of an employer who was not required to contribute to a plan until the first plan year ending after February 27, 1979, the second component of withdrawal liability would not apply.

The portion of an employer's withdrawal liability attributable to plan years ending after February 28, 1979, would be computed in several steps, as follows:

(1) The first step is to determine what is known as the "change in the plan's unfunded benefit obligations" for each plan year ending after February 28, 1979. Under the bill, this amount would be calculated for each plan year as the difference between (a) the unfunded benefit obligations as of the end of the plan year, and (b) the sum of (i) the unfunded benefit obligations on the last day of the last plan year ending before February 28, 1979, reduced by five percent for each succeeding plan year, and (ii) the sum of the unamortized amount of the change in unfunded benefit obligations for each plan year ending after February 27, 1979, and preceding the plan year.

(2) The second step is to determine what is known as "the unamortized amount of the change in a plan's unfunded benefit obligations for a plan year". This is determined by reducing the change in a plan's unfunded benefit obligations for a plan year (determined under step (1)) by five percent for each succeeding plan year.

(3) The third step is to calculate the employer's "proportional share of the unamortized amount of the change in the unfunded benefit obligations" for each plan year involved. This is accomplished by multiplying the unamortized amount of the change for each plan year, determined as of the end of the plan year in which the employer withdraws from the plan, by a fraction. The numerator of the fraction is the sum of contributions which the employer was required to make to the plan for the year of the change and for the preceding four plan years. The denominator of the fraction is the sum of contributions which all employers were required to make to the plan for the year of the change and for the preceding four plan years.

(4) The final step is to add up the employer's proportional share of the unamortized amount of the change in the plan's unfunded benefit obligations for each of the plan years. This total is the employer's proportional share of the unamortized amount of the change in the plan's unfunded benefit obligations for all plan years ending after February 27, 1979.

The portion of an employer's withdrawal liability with respect to plan years ending before February 28, 1979, would be determined by multiplying (1) the amount of the unfunded benefit obligations under the plan as of the last day of the last plan year ending before February 28, 1979, reduced by five percent for each succeeding plan year, by (2) a fraction. The numerator of the fraction is the sum of contributions which the employer was required to make to the plan for the last five plan years ending before February 28, 1979. The denominator of the fraction is the sum of the same five plan years of plan contributions made by all employers who (a) had an obligation to contribute under the plan for the first plan year ending after February 27, 1979, and (b) had not withdrawn from the plan before February 28, 1979.

2. First alternative method

The first alternative method would also draw a distinction between employers who contributed to a plan for plan years ending before February 28, 1979, and employers who did not contribute to the plan for such years. As in the case of the basic method, only employers who contributed for years ending before February 28, 1979 would have their withdrawal liability computed with reference to unfunded benefit obligations under the plan attributable to such years. Other employers would have their withdrawal liability computed solely with reference to the plan's unfunded benefit obligations attributable to plan years ending after February 27, 1979. However, unlike the basic method, under the first alternative method, an employer's withdrawal liability would be based on the aggregate change in unfunded benefit obligations with respect to all plan years ending after February 27, 1979, rather than on the change in unfunded benefit obligations for each separate plan year for which the employer was required to contribute to the plan.

In particular, the first component of withdrawal liability under the first alternative method would be obtained by multiplying (1) the plan's unfunded benefit obligations as of the last day of the last plan year ending beofre February 28, 1979, reduced as if that amount were being amortized thereafter in level annual installments over 15 years, by (2) a fraction. The numerator of the fraction is the sum of the plan contributions required of the employer for the last plan year neding before February 28, 1979, and for the preceding four plan years. The denominator of the fraction is the sum of the contributions by included employers required for that period of five plan years. An employer is included if (1) the employer was required to contribute to the plan for the first plan year ending after February 27, 1979, and (2) the employer had not withdrawn from the plan before February 28, 1979.

The second component of withdrawal liability under the first alternative method would be obtained by computing the excess of the plan's unfunded benefit obligations (as of the last day of the plan year in which the employer withdraws) over the plan's unfunded benefit obligations as of the last day of the last plan year ending before February 28, 1979 (as reduced by 15-year amortization) and multiplying the excess by a fraction. The numerator of the fraction is the total amount required to be contributed by the employer for the last plan year ending before withdrawal and for the four preceding plan years. The denominator of the fraction is the total amount contributed by all employers for those five plan years, increased by employer contributions for earlier periods that are collected during the five plan years, and reduced by the contributions made by any employer who withdrew from the plan during any of the five plan years.

3. Second alternative method

The second alternative method for computing withdrawal liability would draw no distinction between employers who were required to contribute to a plan for plan years ending before February 28, 1979, and employers who were required to contribute only for plan years ending after February 27, 1979. Accordingly, employers in both categories would have their withdrawal liability computed with reference to all of a plan's unfunded benefit obligations.

Under this method, withdrawal liability would be determined by multiplying (1) the plan's unfunded benefit obligations as of the last day of the plan year of the withdrawal, reduced by the value of certain outstanding claims for withdrawal liability, by (2) a fraction. The numerator of the fraction is the amount which the employer was required to contribute to the plan for the five plan years preceding the plan year of the withdrawal. The denominator of the fraction is the total amount which all employers actually contributed to the plan for the same five-year period, with certain adjustments.

4. Third alternative method

The third alternative method would take a different type of approach to computing withdrawal liability. Rather than determining the liability based upon the employer's share of plan contributions during the five-year period, the method is intended to compute the portion of the plan's unfunded benefit obligations which are attributable to service of plan participants with the employer. In addition, the plan's unfunded benefit obligations which are not attributable to any employer would also be computed. A portion of those "unattributable obligations" would then be allocated to the employer. This would generally be done in proportion to unfunded benefit obligations which are attributable to each employer, although another type of allocation would be permissible. In addition, the unattributable unfunded benefit obligations as of the last day of the plan year ending before February 27, 1979, would not have to be allocated to an employer who is not obligated to contribute under the plan on that date. An employer's withdrawal liability would then be determined as the sum of (1) the portion of the plan's unfunded benefit obligations which are attributable to service plan participants with the employer, and (2) the portion of "unattributable obligations" which is allocated to the employer.

5. Other metals

The bill would authorize the PBGC to prescribe by regulations a procedure by which a plan may adopt other methods for determining withdrawal liability. The PBGC, before approving any such method, would be required to determine that the method would not significantly increase the risk of loss to the PBGC. In addition, the PBGC would be authorized to prescribe standard approaches for alternative methods for which approval would either not be necessary or would be necessary only under a modified procedure. Any such alternative method would be required to allocate to employers all of the plan's unfunded benefit obligations.

Payment of withdrawal liability

1. In general

An employer who withdraws from a multiemployer plan would be required to pay its withdrawal liability to the plan in accordance with a payment schedule to be determined by the plan sponsor under standards set forth in the bill.[4] As soon as practicable after a withdrawal, the plan sponsor would be required to notify the employer of (1) the amount of withdrawal liability, and (2) the payment schedule. In addition, the plan sponsor would be required to demand that the employer make payment of withdrawal liability in accordance with the payment schedule.

In calculating the payment schedule, the plan sponsor would compute the annual payment under a formula set forth in the bill. The amount of each annual payment under the formula would be determined as the product of two amounts. The first amount would be the average number of contribution base units (e.g., hours worked, tons of coal mined) for the three years, during the 10 plan years, ending with the year of the withdrawal, in which the number of contribution base units used to determine the employer's contributions to the plan were highest. The second amount would be the highest contribution rate (e.g., cents per hour or cents per ton of coal) which the employer had an obligation to contribute under the plan during the 10 plan years ending with the year of withdrawal.

For example, assume that an employer's withdrawal liability is $1 million and that the plan's valuation rate of interest is 6 percent. Assume that in the 3 years for which the contribution base units were the highest during the 10 most recent plan years during which the employer was obligated to contribute to the plan, the number of such units were 800,000 hours, 85,000 hours and 90,000 hours respectively, and that during the last ten plan years the highest contribution rate applicable to the employer under the plan was 75 cents an hour. The product of 85,000 hours (the average of 80,000, 85,000, and 90,000) and 75 cents an hour is $63,750. This would result in the amortization of the liability over approximately 49 years. Because the 49-year schedule is longer than 30 years, the employer would be liable to the plan for 30 annual payments of $63,750.

In the event that a multiemployer plan terminates upon (1) withdrawal of all employers in the plan or (2) withdrawal of substantially all employers in the plan pursuant to an agreement or arrangement to withdraw, the annual amount of withdrawal liability payable by each employer would be computed without regard to the 30-year amortization alternative. Thus in the above example, if all employers were to

---

[4] The plan sponsor of a multiemployer plan is generally a Joint Board of Trustees which administers the plan.

withdraw, the liability of the employer would be $63,750 a year for approximately 49 years.

In the case of "partial withdrawal," withdrawal liability payments are to be made in the same fashion as in the instance of a complete withdrawal, but the amount payable would be only a pro rata portion of the payment which would be in the case of a complete withdrawal.

2. Time for payment

Payment of withdrawal liability would begin no later than 60 days after the date on which a demand for payment is made by the plan sponsor. Under the bill, payments would generally be made in four equal quarterly installments unless the rules of a particular plan provided for payment at other intervals. In any case where payment is not made when due, the bill would require interest to accrue with respect to the unpaid amount at the prevailing market rate.

An employer would be permitted to prepay its withdrawal liability obligations in whole or in part without penalty.

In the eevnt of default by an employer in payment of its withdrawal liability, the plan sponsor would be permitted to require immediate payment of the balance of the employer's withdrawal liability plus any accrued interest thereon. Default would generally occur where an employer fails to make any payment with respect to withdrawal liability when due, and further fails to make payment within 60 days after receiving written notice from the plan sponsor that payment of withdrawal liability is due but unpaid. Litigation instituted by an employer to contest the liability would not suspend the running of the 60-day period. In addition, the plan would be permitted to adopt rules which would provide for other instances of default where it is indicated that there is a reasonable likelihood that an employer would be unable to pay its withdrawal liability.

In the case of a multiemployer plan which terminates, each employer's obligation to make withdrawal liability payments which has not already been satisfied would cease at the end of the plan year in which the plan's assets are sufficient to meet all of its obligations. This determination of sufficiency would be made by the PBGC.

3. Notice requirements and furnishing of information

Withdrawal liability would be collectible upon notice to the withdrawn employer by the plan sponsor. In order for the plan sponsor to be in a position to accurately determine liability, the bill would require the employer to furnish information to the plan sponsor. After an employer withdraws from a plan, the plan sponsor would request in writing that the employer furnish such information as the plan sponsor reasonably considers necessary for it to fulfill its duties in computing and collecting withdrawal liability. The bill would permit an employer 30 days after such a written request from the plan sponsor to furnish the requested information.

The actual demand for payment of liability in accordance with the payment schedule would be made by the plan sponsor. The plan would require that before the plan sponsor demands payment it must afford the employer a reasonable opportunity (1) to identify errors in the determination of withdrawal liability, (2) to identify errors in the payment schedule, and (3) to furnish to the plan sponsor any additional pertinent information. The plan sponsor also would be required, if requested, to make relevant plan records reasonably available to the employer for review and duplication.

After the plan sponsor demands payment of withdrawal liability, an employer would be permitted to request the plan sponsor to review any item relating to the calculation of the liability and the payment schedule. Any such request for review would have to be made within 90 days after the employer receives the initial notice and demand for payment of the liability. In response to such a request by an employer, the plan sponsor would be required to conduct a reasonable review of any matter questioned and to notify the employer of (1) its decision, (2) the grounds for its decision, and (3) the reason for any modification in the employer's withdrawal liability or of the payments schedule.

4. Determination of actuarial assumptions, etc.

The PBGC would be required to prescribe regulations setting forth actuarial assumptions which a plan would be permitted to use in calculating withdrawal liability. However, a plan would be permitted to provide instead that its own assumptions would be used to determine withdrawal liability rather than those developed by the PBGC.

In determining unfunded benefit obligations under a plan, the plan's actuaries and the plan adminstrator would be permitted to rely on data available or on data secured by certain sampling techniques in situations where complete and definitive data is absent. In addition, a complete valuation of the plan would not have to be made more often than once every three years for the purpose of computing unfunded benefit obligations, and reasonable estimates would be permitted in the interim years.

5. Plan rules and amendments

There are several situations where plans, in the application of their own rules, either initially or by amendment, are permitted a wide degree of latitude in allocating and calculating withdrawal liability. In order to protect an employer from retroactive changes in a plan's rules, the bill would require that no plan rule or amendment affecting withdrawal liability may be applicable with respect to a withdrawal occurring before its date of adoption, unless the employer in question consents to its earlier application.

The bill would also require that plan rules and amendments operate and be applied uniformly with respect to each employer except to the extent that lack of uniformity would be required to take into account employers' credit ratings.

Under the bill, when a plan rule or amendment affects withdrawal liability, the plan sponsor would be required to give notice of the rule or amendment to all employers required to contribute to the plan and to all employee organizations representing employees covered by the plan.

6. Notice to PBGC

Under regulations the PBGC would be permitted to require a plan sponsor to notify the PBGC in any case where the withdrawal from a plan of employers has resulted in a significant reduction in total contributions to the plan.

7. Relationship to other rules

Actions taken under the bill pursuant to the withdrawal liability rules would not be considered prohibited self-dealing transactions for purposes of the nontax provisions of ERISA.

In addition, payments of withdrawal liability would not be considered employer contributions for purposes of calculating withdrawal liability.

8. Determinations presumed correct

Under the bill, a determination of withdrawal liability by a plan would be presumed correct unless the party seeking to contest the determination shows by a preponderance of the evidence that it is unreasonable or clearly erroneous.

The determination by a plan as to the amount of its unfunded benefit obligations for a plan year would be presumed correct, unless a party seeking to contest a determination shows by a preponderance of the evidence that (1) the actuarial assumptions and methods used in the determination were unreasonable in the aggregate, or (2) a significant error was made by the plan's actuary in applying actuarial assumptions or methods.

Where the withdrawal liability of a plan is determined before final regulations on determination of withdrawal liability are issued by the PBGC, any inconsistency with such final regulations would not be considered conclusive evidence that the determination made was unreasonable.

Merger or transfer of plan assets or liabilities

1. Mergers and transfers to multiemployer plans

Under the bill, a plan sponsor would not be permitted to allow a multiemployer plan to merge with one or more multiemployer plans or to engage in a transfer of assets or liabilities to or from another multiemployer plan unless certain conditions are met. The applicable conditions are that:

(1) the accrued benefit of any participant or beneficiary will not be lower after the merger or transfer than it was before the merger or transfer;

(2) the benefits of participants and beneficiaries are not reasonably expected to be reduced under the reorganization or insolvency provisions of the bill during the five-plan-year-period following the year in which the merger or transfer is effective;

(3) it is not reasonably expected that the risk of loss to the PBGC with respect to any of the affected plans will increase significantly;

(4) there has been obtained an actuarial valuation of assets and liabilities of each of the affected plans for the plan year preceding the merger or transfer and the valuation is based on data not more than two years old; and

(5) the merger or transfer is agreed to by the plan sponsors of all the affected plans.

The fourth condition (regarding the requirement for an actuarial valuation) would not apply in the case of a transfer of assets pursuant to a written reciprocity agreement.

Under the bill action taken under the merger, etc., provisions would not constitute a prohibited self-dealing transaction under the nontax provisions of ERISA.

The plan sponsor under a multiemployer plan which would be affected by a proposed merger would be permitted to request an advisory opinion from the PBGC that the proposed merger complies with the requirements of the bill.

2. Transfers between a multiemployer plan and a single-employer plan

The bill would provide that, in the case of a transfer of assets or liabilities from a multiemployer plan to a single-employer plan, the accrued benefit of any participant could not be lower immediately after the transfer than it was immediately before the transfer. In addition, in the case of a transfer of liabilities from a single-employer plan to a multiemployer plan or a merger of a single-employer plan into a multiemployer plan, no accrued benefit could be lower immediately after the transfer or merger than it was immediately before the transfer or merger.

As a general rule, the bill would require that, where a multiemployer plan transfers liabilities to a single-employer plan, the multiemployer plan would be liable to the PBGC in the event of the termination of the single-employer plan within 60 months after the transfer. Under the bill, the amount of the liability would be the lesser of (1) the excess of the insufficiency of plan assets of the terminated single-employer plan over 30 percent of the net worth of the employer maintaining the single-employer plan, or (2) the present value of the unfunded benefits transferred to the single-employer plan and guaranteed by the PBGC (such present value to be determined at the time of the transfer). Thus liability would not apply to a multiemployer plan unless the PBGC determines that the interests of the participants or the PBGC would not otherwise be adequately protected. The PBGC would be required to make such determination within 120 days after receipt of a complete application from the plan sponsor of the multiemployer plan that such a determination be made. In addition, a multiemployer plan would not be liable under the bill because of the transfer of liabilities to a single-employer plan where (1) the liabilities had previously accrued under a single-employer plan that merged with the multiemployer plan, (2) the present value of the liabilities is not greater than the present value of liabilities for benefits which accrued before the single-employer plan merged with the multiemployer plan, and (3) the value of the assets transferred with the liabilities is substantially equal to value of the assets which would have been in the single-employer plan if the employer had maintained and funded it as a separate plan under which no benefits accrued after the merger. This exception to the liability provision is sometimes referred to as the "in and out rule" because it is designed to protect multiemployer plans which merge with but later spin off single-employer plans.

In any case where a multiemployer plan would be liable under the bill because of a merger or transfer, the PBGC would be authorized to make arrangements for satisfaction of the liability.

Where benefits are transferred to a single-employer plan under the merger or transfer rules, the benefits would thereafter be governed by the termination insurance rules applicable to single-employer plans.

As a general rule, a multiemployer plan would not be permitted to transfer assets to a single-employer plan unless the plan sponsor of the single-employer plan agrees to the transfer. In the case of a transfer under the "in and out" rule, however, the plan sponsor need not so consent if advance agreement is obtained from the employer who, after the transfer, will be obligated to contribute to the single-employer plan.

3. Partition

Partition would occur under the bill when, pursuant to court order, a portion of the assets and liabilities of a multiemployer plan is separated off as a separate fund. Under the bill, a plan sponsor would be permitted to request the PBGC to petition a Federal District Court for an order of partition upon a showing of certain facts. The plan sponsor would have to show that (1) a bankruptcy or similar proceeding with respect to an employer has resulted or will result in a substantial reduction in the aggregate amount of contributions to the plan, and (2) it has determined that the participants' and beneficiaries' vested benefits which would be partitioned are directly attributable to service with the employer involved in the bankruptcy or similar proceeding.

If the PBGC determines (1) that the plan is likely to become insolvent, or (2) that the plan is likely to become insolvent as a result of a reduction of contributions because the employer is involved in a bankruptcy or similar proceeding, the PBGC may petition the Federal District Court for partition, if it determines that partition will significantly decrease the risk that insolvency will occur. In such a case, the PBGC would be required to notify the plan sponsor and the plan participants and beneficiaries whose rights to benefits would be partitioned. The PBGC, in its petition for partition, would be permitted to propose a transfer of only vested benefits directly attributable to service with the employer involved in the bankruptcy or similar proceeding. An equitable share of the assets would also be transferred.

The portion of the multiemployer plan which is partitioned would be treated under the bill as a terminated multiemployer plan under which only the employer involved in the bankruptcy or similar proceeding would have withdrawal liability.

4. Assets transferable

Under the bill, multiemployer plans would be required to provide rules regarding the transfer of assets to another plan. The rules would not be permitted to restrict unreasonably the transfer of plan assets in connection with a transfer of plan liabilities and would have to operate and be applied uniformly with respect to all transfers, except that reasonable variations would be permitted to take into account the potential financial impact of a particular transfer on a multiemployer plan.

Under the bill the PBGC would be required to prescribe regulations exempting from the merger, etc., rules, *de minimis* transfer of assets and transfers pursuant to written reciprocity agreements.

Reorganization

1. In general

Under the bill certain financially troubled multiemployer plans would be considered in a status of "reorganization." Once a plan enters a status of reorganization (1) benefits under the plan, including benefits of retirees which are in pay status, could be reduced to the level of benefits eligible for guarantee by the PBGC, (2) certain modifications to the otherwise applicable funding requirements of ERISA would apply, (3) certain modifications to the otherwise applicable vesting requirements of ERISA would apply, and (4) certain prohibitions against increases in benefits would be applicable.

2. Reorganization status

Under the bill, if the financial condition of a multiemployer plan becomes sufficiently poor under standards set forth in the bill, the plan would be considered in a status of reorganization and would be subject to certain special rules regarding funding and adjustments in accrued benefits.

A multiemployer plan would be in a reorganization for a year if (1) the plan's reorganization index is greater than zero, or (2) benefit payments required to be made under the plan in the year exceed an amount equal to three times the value of the plan's assets determined as of the close of the previous plan year. The bill would define the reorganization index as the excess of the "benefit entitlements charge" of the plan over the amount necessary to balance charges and credits in the plan's funding standard account for the year without taking into account (1) credits for contributions to the plan for the year, (2) credits with respect to any waived funding deficiency for the year, and (3) credits with respect to any switchback liability for the year. "Benefit entitlements charge" would be defined as the amount necessary to amortize, in equal annual installments, the unfunded benefit obligations of the plan, determined as of the close of the plan year, (1) over 10 years in the case of obligations attributable to persons whose benefits are in pay status, and (2) over 25 years in the case of other obligations.

Under the bill, the determination of unfunded benefit obligations for purposes of calculating the benefit entitlements charge would be based on a valuation of the plan performed as of the last day of the "base plan year" and adjusted in certain respects. The "base plan year" would be the last plan year ending at least six months before the earliest date on which any "relevant collective bargaining agreement" that is in effect for more than six months during the plan year is first effective. A "relevant collective bargaining agreement" would be a collective bargaining agreement which has not been in effect for more than three years as of the end of the plan year. In any case where there is no such relevant collective bargaining agreement, the base plan year would be the plan year ending two years before the plan year in which the determination of unfunded benefit obligations is made.

3. Prohibition of certain lump sum payments

Under the bill, if a plan is in reorganization, the present value of a participant's vested benefits derived from employer contributions would not be permitted to be distributed in a lump sum if the distribution would exceed $1,750. This prohibition would not apply (1) in the case of a death benefit distribution, or (2) if the corporation approves the payment of benefits in accordance with the plan in a greater amount after determining that the payment is in the interest of the plan's participants and beneficiaries and does not unreasonably add to the PBGC's risk of loss with respect to the plan.

4. Termination of reorganization status

In the case of a terminated multiemployer plan, the bill would not permit the plan to remain in reorganization status after the date on which the last employer maintaining the plan withdraws from the plan. For this purpose, the determination of whether a withdrawal takes place would be made in accordance with the definition of withdrawal contained in the bill's withdrawal liability provisions (see *Definition of withdrawal, 1. Complete withdrawal*), and partial withdrawals would not be taken into account.

5. Notice of reorganization

Under the bill, when a multiemployer plan is in reorganization and would require an increase in contributions (before taking into account the credit for overburdened plans (See *6. Funding requirements for plans in reorganization, b. Credit for overburdened plans*) or any accrued benefit reductions permitted under the reorganization provisions), the plan sponsor would be required to notify certain persons of the reorganization status in the plan's summary annual report. The persons to be notified would be (1) plan participants and beneficiaries, (2) employers required to contribute to the plan, and (3) employee organizations representing plan participants with respect to the plan. In addition to stating that the plan is in reorganization status, the notice would have to state that it is possible that accrued benefits under the plan may be reduced or that an excise tax may be imposed on employers if they fail to increase plan contributions.

In addition, the Secretary of the Treasury would be authorized to issue regulations prescribing additional or alternative requirements for assuring adequate notice to, and access to relevant information by interested parties.

6. Funding requirements for plans in reorganization

a. In general.—Under the bill, a plan in reorganization would be required to meet certain minimum funding requirements. These requirements would be met for a plan year if for the year the plan does not have a "reorganization deficiency." A "reorganization deficiency" would be defined under the bill as the excess of the "minimum contribution requirement" over amounts considered contributed by the employer to the plan for the plan year, including amounts contributed to meet withdrawal liability obligations. The bill would define the minimum contribution requirement as the lesser of two amounts. The first amount is the sum of (1) the plan's benefit entitlements charge, and (2) the normal cost attributable to any plan amendment adopted or effective in a year when the plan is in reorganization. The second amount is the product of (1) the sum of the two items determined as the first amount, and (2) a fraction. The numerator of the fraction is the plan's current contribution base for the plan year. The denominator of the fraction is the plan's valuation contribution base. On the other hand, if a plan's benefit entitlements charge is less than the plan's "cash flow amount" for a plan year, the minimum contribution requirement is determined by substituting the "cash flow amount" for the benefit entitlements charge. For this purpose, "cash flow amount" is the aggregate amount of benefits payable under the plan increased by the plan's administrative expenses for the plan year and decreased by the value of available plan assets, as determined under regulations prescribed by the Secretary of the Treasury. Also, in determining a plan's minimum contribution requirement for a plan year, the benefit entitlements charge may be adjusted to reflect a plan amendment which reduces benefits under the reorganization or plan termination provisions of the bill or under the funding standard. This adjustment would only take place, however, if the amendment is adopted and effective no later than 2½ months after the close of the plan year, or within an extended period for making the amendment as prescribed in regulations issued by the Secretary of the Treasury.

For purposes of applying the fraction in the above formula, a plan's "valuation contribution base" is equal to the plan's contribution base for the plan year for which the valuation used to determine unfunded benefit obligations under the plan was made, with certain adjustments.

In order that a plan in reorganization will not become subject to an excise tax because of an accumulated funding deficiency under the minimum funding standard, the bill would provide that the accumulated funding deficiency of such a plan for a plan year is equivalent to the plan's reorganization deficiency for the plan year. Thus, a plan which receives sufficient contributions to eliminate its reorganization deficiency for the year would also eliminate its accumulated funding deficiency and employers would thus not become subject to an excise tax for failure to meet the minimum funding standard for that year. In addition, as a conforming change, in the case of a multiemployer plan in reorganization the term "minimum contribution requirement" is substituted for "minimum funding standard" for purposes of the ERISA funding requirements.

b. Credit for overburdened plans.—In any case where a plan would be overburdened for a plan year under standards set forth in the bill, the plan would be required to apply an "overburden credit" against its reorganization deficiency for the year. A plan would be considered overburdened for a plan year if (1) the average number of participants in pay status in the year exceeds the average number of active participants in that year and the preceding two plan years, and (2) the rate of employer contributions to the plan is at least equal to the greater of the rate of contributions for the preceding plan year or the rate of contributions for the year just prior to the first plan year in which the plan was in reorganization. For purposes of this rule, "pay status participants" would mean retired employees receiving pension payments as an annuity, and "active participant" would mean (1) any plan participant who has not failed to accrue a benefit for the year because of insufficient active employment, (2) any active employee who is in an employment unit covered by a collective bargaining agreement requiring the employee's employer to contribute to the plan, and (3) any active employee considered an employee of the employer under a special formula in the bill which would treat certain employees as the employer's employees on the basis of the employer's withdrawal liability contributions to the plan. Also, for purposes of applying the above rule, in determining the first plan year in which a plan is in reorganization, years in which the plan was previously in reorganization are disregarded if followed by three consecutive plan years in which the plan is not in reorganization.

The amount of overburden credit for a plan year would be the product of two amounts. The first amount would be one-half of the "average guaranteed benefit paid," and the second amount would be the "overburden factor" for the plan year. The "average guaranteed benefit paid" would be the quotient of (1) the total guaranteed annuity pension payments under the plan, and (2) the number of pay status participants in the plan for the plan year. The "overburden factor" for a plan for a plan year would be the excess of (1) the number of pay status participants over (2) the average number of active participants in the plan in the plan year and the two preceding plan years.

Under the bill, the Secretary of the Treasury could deny a plan an overburden credit for a plan year upon a finding that (1) the plan's current contribution base was reduced without a correlative reduction in the plan's unfunded benefit obligations attributable to pay status participants, and (2) such reduction resulted from a change in an agreement providing for employer contributions to the plan. However, an employer withdrawal would not prevent a plan from being eligible for the overburden credit, except where the Secretary of the Treasury finds that in connection with the withdrawal a contribution base reduction resulted from a transfer of plan liabilities to another plan.

Under the bill, in the case of the merger of one or more multiemployer plans which are in reorganization, there would be a limit on the amount of overburden credit which could be applied to the minimum contribution requirement of the merged plan. The maximum credit for any of the three plan years ending after the merger could not be permitted to exceed the sum of the overburden credits applied by each of the plans to avoid a reorganization deficiency for the last plan year ending before the merger.

The bill would provide a safe harbor under which plans receiving a certain minimum level of employer contributions for a plan year would be deemed not to have a reorganization deficiency for the year. This minimum level would be reached where employer contributions are at least equal to the sum of (1) the rate of employer contributions which would be required for the year absent the reorganization funding requirements, and (2) an amount equal to seven percent of the rate of employer contributions which would apply in the absence of the reorganization funding requirements multiplied by the number of plan years which elapsed since the effective date of those requirements. However, the safe harbor would not apply to a plan if a plan amendment adopted after the date of enactment of the reorganization funding requirement increases benefits with respect to service prior to the date the amendment is adopted.

7. Adjustments in accrued benefits

With very limited exceptions, under present law, plan amendments are not permitted to reduce accrued benefits. However, in the case of a multiemployer plan in reorganization, the bill would permit plan amendments to reduce accrued benefits attributable to employer contributions under certain circumstances. The accrued benefits which are subject to reduction are those which are not eligible for guarantee by the PBGC.

The conditions which must be met in order for a plan's accrued benefits to be reduced are as follows:

a. A notice must be given, at least six months in advance of the first day of the plan year in which the amendment reducing accrued benefits is adopted, to plan participants and beneficiaries, to each employer with an obligation to contribute to the plan, and to each affected employee organization. The notice must state that the plan is in reorganization and that accrued benefits under the plan are required to be reduced or the failure to increase employer contributions to the plan may result in an excise tax for failure to meet the minimum funding standard.

b. Under regulations to be issued by the Secretary of the Treasury—

(i) accrued benefits of inactive participants are not to be reduced to a greater extent proportionally than accrued benefits overall are reduced;

(ii) benefits attributable to employer contributions other than accrued benefits (such as death benefits or health benefits) and the rate of future benefit accruals are to be decreased at least as much as accrued benefits of active participants are decreased; and

(iii) if the reduction in accrued benefits takes the form of a change in the mode of benefit or the requirements for benefit entitlements, the reduction may not affect benefits in pay status on the effective date of the amendment or benefits of any participant who has reached, or is within five years of, normal retirement age on the effective date of the amendment.

c. The rate of employer contributions for the plan year in which the amendment becomes effective and for all future years while the plan is in reorganization must at least equal the greater of (i) the rate of employer contribution for the plan year in which the amendment becomes effective, or (ii) the rate of employer contributions for the preceding plan year.

Where accrued benefits are decreased by a plan amendment, a plan would not be permitted to recapture a benefit payment which has already been made under the plan's accrued benefit provisions determined before the amendment is adopted.

Once a plan has been amended to decrease accrued benefits, a future plan amendment would be permitted to increase accrued benefits or the rate of future benefit accrual only if the plan were first amended to restore previously eliminated accrued benefits of inactive participants and participants within five years of normal retirement age at least to the extent of the amount or rate by which the plan amendment increases benefit accruals. Moreover, where a plan is amended so that it partially restores previously accrued benefit levels or the previous rate of accrual, the benefits of inactive participants must be restored in at least the same proportions as other accrued benefits are restored.

Under the bill, no increase in benefits under a plan would be permitted to take effect in a plan year in which an amendment reducing accrued benefits is adopted or first becomes effective.

Where a benefit is reduced and later restored, a plan is not required to make retroactive benefit payments to participants who received payments under the reduced accrued benefit levels.

For purposes of applying these rules, an inactive participant is a person whose benefits are in pay status under the plan or a person not currently in service under the plan who nevertheless has a vested benefit.

The Secretary of the Treasury would be authorized to prescribe regulations which would permit benefit reductions or increases for different groups of participants on an equitable basis to reflect variations in contribution rates and other relevant factors reflecting differences in bargained-for levels of financial support for plan benefit obligations.

8. Insolvent plans

Under the bill, if a multiemployer plan is insolvent for a plan year, the plan would be permitted to suspend the payment of benefits, other than basic benefits, which exceed the "resource benefit level." This rule would not apply, however, if the PBGC were to prescribe a procedure for the guarantee of supplemental benefits (benefits exceeding basic benefits). A multiemployer plan would be considered insolvent for a plan year if (1) it is in reorganization, (2) it has been amended to reduce benefits to the level of base benefits, and (3) it does not have available resources sufficient to pay benefits under the plan when due for the plan year. The term "resource benefit level" would mean the highest level of monthly benefits which the plan could pay out of its available resources.

For each year for which a multiemployer plan is insolvent, the plan sponsor would be required to determine and certify the resource benefit level of the plan, based on its reasonable projection of available resources and benefits payable. Where the suspension of benefits above the resource benefit level takes place, benefits would have to be suspended in substantially uniform proportions with respect to all persons whose benefits are in pay status under the plan. This would have to be done in a manner consistent with regulations prescribed by the Secretary of the Treasury. In addition, the Secretary would be authorized to prescribe rules under which the benefits of different participant groups could be suspended in disproportionate fashion if varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in bargained-for levels of financial support for plan benefit obligations.

A plan sponsor would not be permitted to determine and certify a resource benefit level which is below the level of basic benefits for a plan year, except in a case where payment of all nonbasic benefits was suspended for the plan year.

If, by the end of a plan year for which a plan is insolvent, the plan sponsor determines that benefits could be paid above the resource benefit level, the plan sponsor would be required to direct the distribution of such additional benefits in accordance with regulations prescribed by the Secretary of the Treasury. Where, by the end of the year, benefits up to the resource benefit level have not been paid, the amounts necessary to bring benefits up to that level would be required to be distributed in accordance with regulations prescribed by the

Secretary of the Treasury, to the extent possible, considering the plan's available resources.

Every three years during the period when a plan is in reorganization, beginning with the end of the first such plan year, the plan sponsor would be required to compare the value of plan assets with the total amount of benefit payments for the year. Except where plan assets exceed three times the total amount of benefit payments, the plan sponsor would be required to make a determination regarding whether the plan will be insolvent during any of the next three plan years. In addition, if at any time the plan sponsor determines, on the basis of experience, that available resources are not sufficient to pay benefits when due for the forthcoming plan year, it would be required to certify that the plan will be insolvent for that year. Such certification would be required no later than three months before the commencement of the plan year.

For each year for which a plan is insolvent, the plan sponsor would be required to determine and certify the resource benefit level no later than three months before the commencement of the plan year. In addition, if the plan sponsor determines that the plan may be insolvent any time in the next three plan years, it would be required to so notify (1) the Secretary of the Treasury, (2) the PBGC, (3) plan participants and beneficiaries, (4) each employer required to contribute to the plan, and (5) each affected employee organization. In addition, the above parties other than the Secretary of the Treasury and the PBGC would have to be informed that, in the event of insolvency, benefit payments would be suspended but basic benefits would continue to be paid. No later than two months before the first day of a year for which a plan is insolvent, the plan sponsor would be required to notify each of the above parties of the plan's resource benefit level.

Where the plan sponsor believes that the resource benefit level for a plan year for which a plan is insolvent may not exceed the level of basic benefits, it would be required to so notify the PBGC no later than six months before the first day of the plan year.

Where a plan sponsor determines and certifies a resource benefit level below the level of basic benefits, it would be required to apply for PBGC financial assistance. Where the plan sponsor determines a resource benefit level above the level of basic benefits but anticipates that for any month during a year for which the plan is insolvent the plan will not have sufficient assets to pay basic benefits, the plan sponsor would be permitted to apply to the PBGC for financial assistance.

9. Financial assistance

Under the bill, if the PBGC receives an application for financial assistance from a plan and verifies that the plan will be insolvent and unable to pay basic benefits when due, the PBGC would be required to provide financial assistance to the plan in an amount sufficient to permit the plan to pay its basic benefits. Such financial assistance would be provided under such conditions as the PBGC determines would be equitable and appropriate to prevent unreasonable loss to the PBGC with respect to the plan. Where a plan receives financial assistance from the PBGC, it would be required to repay the PBGC for such assistance on reasonable terms which are consistent with regulations to be issued by the PBGC.

While the PBGC is determining the amount of assistance necessary to permit a plan to pay basic benefits, it would be permitted to provide interim financial assistance in an amount appropriate to avoid undue hardship to plan participants and beneficiaries.

10. Benefits under certain terminated plans

Under the bill, where a plan terminates, the plan sponsor would be required to amend the plan (1) to reduce benefits, and (2) to suspend certain benefit payments. The reduction in benefits would be to a level at which plan assets would be sufficient to pay vested benefits under the plan. In making the determination of this level, the present value of vested benefits under the plan and the value of plan assets would have to be determined and certified as of the end of the plan year in which the plan terminates, and as of the end of every plan year thereafter. For this purpose, (1) plan assets would include outstanding claims for withdrawal liability, and (2) for the year in which the plan terminates and for the following two plan years plan assets would also include certain additional assets attributable to employer withdrawal liability, as prescribed in regulations issued by the PBGC in order to avoid premature benefit reductions.

Any plan amendment reducing benefits would be required to (1) limit the reduction to the extent necessary to permit the payment of vested benefits, (2) eliminate or reduce only benefits which are not guaranteed by the PBGC, (3) except to the extent permitted by the PBGC, make reductions only in accordance with the reorganization rules and only to the extent permitted under such rules, and (4) become effective no later than six months after the plan year in which it was determined that the present value of vested benefits exceeds plan assets.

The benefit payments which would have to be suspended where a plan terminates would be all benefit payments in excess of the resource benefit level, except to the extent that an alternative procedure is prescribed by the PBGC in connection with a supplemental guarantee program.

11. Enforcement

a. Civil actions.—Under the bill, certain persons would be permitted to bring a civil action for appropriate legal relief, equitable relief, or both. These parties would be (1) a plan fiduciary, an employer, a plan participant, or a plan beneficiary, any of whom are adversely affected by the act or omission of any party under the provisions of the bill with respect to multiemployer plans, as well as (2) an employee organization which represents an affected plan participant. However, no such action could be brought against the Secretary of the Treasury.

In any case where a civil action is brought to compel an employer to pay withdrawal liability, the court would be authorized to award (1) interest on the unpaid liability, as well as (2) any liquidated damages payable to the plan. In general, the district courts of the United States would have exclusive jurisdiction for civil actions under the bill without regard to any amount in controversy. In the case of an action brought by a plan fiduciary to collect withdrawal liability, State courts of competent authority would also have jurisdiction.

The proper venues in Federal district court for bringing an action under the bill would be (1) the district where the plan is administered, (2) the district where a defendant resides, or (3) the district where a defendant does business. Service of process would be permitted in any district where a defendant (1) resides, (2) does business, or (3) may be found. In addition, a copy of the complaint in any action brought under the bill would have to be served on the PBGC by certified mail.

In the case of an action under the bill, the court would be permitted to award to the prevailing party all or a portion of costs and expenses in connection with the action, including reasonable attorneys fees.

The period of limitations for the commencement of an action under the bill would expire six years after the date on which the cause of action arose.

The PBGC would be permitted to intervene in any action brought under the bill.

b. Penalty for failure to provide notice.—If any person fails without reasonable cause to provide any notice required under the termination insurance program for multiemployer plans or under implementing regulations the person would be liable to the PBGC in an amount up to $100 for each day that the failure continues. The PBGC would be authorized to bring a civil action against the person failing to give notice. The action could be brought in the United States District Court for the District of Columbia or in any United States district court within the jurisdiction where (1) the plan assets are located, (2) the plan is administered, or (3) a defendant resides or does business. Service of process for such an action could take place in any district where a defendant (1) resides, (2) does business, or (3) may be found.

Effective date

The amendment would apply on the date of enactment.

F. Termination Insurance Premiums (Sec. 105 of the Bill and Sec. 4006 of ERISA)

Present law

Under present law, a multiemployer plan which is subject to the termination insurance program is required to pay annual premiums to the PBGC at the rate of $.50 per plan participant (the annual premium for single employer plans is $2.60 per plan participant). The premium rate may be raised by the PBGC with the approval of the Congress by a concurrent resolution. Also, the PBGC is authorized to set premium rates for insurance of nonbasic benefits and to develop a risk-related premium schedule.[1]

Explanation of provisions

Schedules

The bill would continue the authority of the PBGC to prescribe (subject to approval by the Congress) such schedules of premium rates and bases for the application of those rates as may be necessary to provide sufficient revenue to fund the PBGC to carry out its functions.

Premium rates

Under the bill, as under present law, the PBGC would maintain separate schedules of premium rates and bases for multiemployer plans and for single-employer plans. The bill clarifies present law by providing for separate rates and bases for nonbasic benefits under (1) multiemployer plans and (2) single-employer plans. The bill also continues the authority of the PBGC to revise the premium rate and base schedules for basic benefits (under multiemployer or single-employer plans) whenever the PBGC determines that revision is necessary, subject to approval by Congress.

Basic benefit rates

The bill would continue the present annual per-participant premium of $2.60 for single-employer plans and provides that the annual per-participant premium for multiemployer plans would increase from the present $.50 rate to $2.60 over a nine year period.[2] Under the bill, the premium would not apply more than once per plan year where an individual participates in more than one plan maintained by the same employer. Also, the bill continues the authority of the PBGC to prescribe regulations under which the premium rate for multiemployer plans will not apply to the same participant in a multiemployer plan more than once for any plan year.

---

[1] See ERISA sec. 4006. At the present time, the PBGC does not insure nonbasic benefits and has not developed a risk-related premium.

[2] For the first and second plan years beginning after enactment, the per-participant premium would be $1. The premium would rise to $1.40 for the third and fourth years, to $1.80 for the fifth and sixth years, to $2.20 for the seventh and eighth years, and to $2.60 for the ninth and succeeding years.

In addition, the bill modifies the authority of the PBGC to establish alternative premium rates and bases for basic benefits (subject to Congressional approval) by deleting specific restrictions on the computation of such premiums.

Nonbasic benefits

The bill generally would continue the authority of the PBGC to prescribe schedules of premium rates and bases for nonbasic benefits. With respect to nonbasic benefits in the form of supplemental benefits under a multiemployer plan (see C. Multiemployer Guarantees; Aggregate Limit on Guarantees, *Explanation of provisions—Other benefits*), however, the bill provides that premium rates prescribed by the PBGC may reflect any reasonable consideration that the PBGC determines to be relevant. Nonbasic benefits would be guaranteed by the PBGC only at the election of a plan.

Transition rules

The bill would delete transition rules provided by ERISA with respect to plan years ending within the 35-month period following enactment of ERISA.

Effective date

These provisions of the bill would apply on the date of enactment.

G. Annual Report of Plan Administrator (Sec. 106 of the Bill and Sec. 4065 of ERISA)

Present law

Under ERISA, a plan administrator is required to report the occurrence of specified reportable events to the PBGC. These reports are designed to forewarn the PBGC of potential economic problems under plans.[1] Also, the plan administrator of a plan to which more than one employer contributes is required to notify each substantial employer annually that it is a substantial employer.[2] In addition, reports are required to be filed with the PBGC by plan administrators in connection with the payment of premiums (Form PBGC-1).

Explanation of provisions

The bill would add a requirement that the annual report of a plan administrator, with respect to a plan subject to termination insurance, include such information with respect to the plan as the PBGC determines is necessary for enforcement purposes and that is required by regulations. The bill provides that the information required may include (1) a statement by the plan's enrolled actuary of (a) the present value of all benefit entitlements under the plan as of the end of the plan year, and (b) the value of plan assets as of that time; and (2) a statement certified by the plan administrator of the value of each outstanding claim for withdrawal liability as of the close of the plan year and as of the close of the preceding plan year.

Effective date

This provision would be effective upon enactment.

---

[1] See ERISA sec. 4043.
[2] See ERISA sec. 4066.

H. Contingent Employer Liability Insurance (Sec. 107 of the Bill and Sec. 4023 of ERISA)

Present law

ERISA provides for a program designed to permit an employer to insure against the contingent employer liability (up to 30 percent of the employer's net worth) arising out of the termination of a plan with insufficient assets to provide benefits at the insured level. Under ERISA, the contingent employer liability insurance (CELI) may be developed by the PBGC in conjunction with private insurors. The PBGC is authorized to provide and collect premiums under the CELI program.[1]

Explanation of provisions

The bill would repeal the contingent employer liability insurance provisions of ERISA for multiemployer plans and single-employer plans.

Effective date

This provision would be effective upon enactment.

---

[1] See ERISA sec. 4023. Because of concerns over adverse selection, premium levels, and the possibility of abuse, no CELI program has been initiated by the PBGC. (Private insurors have not shown an interest in developing a CELI program.)

I. Minimum Funding Requirements (Secs. 202 and 304 of the Bill, Sec. 412 of the Code and Secs. 301 and 302 of ERISA)

Present law

In general

Under the Code and the nontax provisions of ERISA, multi-employer pension plans are required to meet a minimum funding standard on an annual basis. As an administrative aid in the application of this standard, ERISA requires that each plan must establish and maintain a special account called a "funding standard account" to which specified charges and credits (including credits for contributions to the plan) must be made for each plan year. If, as of the close of a plan year, the account does not have a balance of charges, the plan is treated as satisfying the minimum funding standard for that year. Thus, as a general rule, the minimum contribution for a year is determined by the amount by which charges to the account would exceed credits to the account if no contribution were made to the plan.

For example, in the case of a plan the plan year of which is the calendar year, if, as of the close of 1980, charges to the plan's funding standard account would exceed credits to the account by $200,000 if no contribution were made to the plan for 1980, a minimum contribution for the year of that amount would generally be required for the plan to meet the minimum funding standard for 1980.

If, as of the close of any plan year, charges to the funding standard account exceed credits to the account, the excess is called an "accumulated funding deficiency." The deficiency is subject to a five-percent nondeductible excise tax and, if not corrected within a specified correction period, is also subject to a 100-percent nondeductible excise tax. The tax is payable by the employers responsible for contributing to the plan for the year.

Actuarial cost methods

In computing the amounts which are required to be contributed to a defined benefit pension plan for a plan year in order to meet the minimum funding standard for the year, the plan's actuary utilizes what is known as an "actuarial cost method." Generally, an actuarial cost method breaks up the cost of the benefits into annual charges consisting of two elements. These elements are called (1) normal cost, and (2) past service cost. Normal cost generally represents the cost of future benefits under the plan which will be funded by future contributions to the plan (1) in level dollar amounts, (2) as a uniform percentage of payroll, (3) as a uniform amount per unit of service (e.g., 50 cents per hour), or (4) on the basis of the actuarial present values of benefits accruing under the plan in particular plan years. Past service liability represents the cost of future benefits under the plan (1) on the date the plan is first effective, or (2) on the date a plan amendment increasing plan benefits is first effective, which will not be funded by future plan contributions to meet normal cost.

Normal cost and past service cost are key elements in computations under the funding standard account. While these costs may differ substantially depending upon the actuarial cost method used to value a plan's assets and liabilities by the plan, they must be determined under an actuarial cost method permitted by ERISA. ERISA enumerates six acceptable actuarial cost methods and provides that additional methods may be permitted under Treasury regulations.

Charges to funding standard account

Normal cost

Each plan year, the plan's funding standard account must be charged with the normal cost assigned to that year under the plan's actuarial cost method. This will generally mean that the employers maintaining the plan will have to contribute to the plan an amount at least equal to the normal cost to create a credit in the funding standard account to balance off the charge for normal cost.

For example, if the normal cost for a plan for the plan year ending December 31, 1980, is $150,000, the funding standard account is charged for that amount. Assuming there are no credits to the account to offset that charge, an employer contribution to the plan of $150,000 would be required for 1980 in order to avoid an accumulated funding deficiency for that year.

Past service liability

There are three separate charges to the funding standard account which may arise as the result of past service liabilities. The first applies only to a plan in existence on January 1, 1974; the second applies only to a plan which came into existence after January 1, 1974; and the third applies to a plan under which past service liability has increased due to a plan amendment made after January 1, 1974.

In the case of a plan in existence on January 1, 1974, the funding standard account is charged with a portion of the past service liability under the plan determined as of the first day of the plan year, beginning in the first year the funding standard applied to the plan (generally 1976). The amount of the liability with which the account is charged in the case of a multiemployer plan is based on amortization of past service liabilities over a period of 40 years. The liability must be amortized (in much the same manner as a mortgage) in equal annual installments over the 40-year amortization period.

For example, assume that a plan in existence on January 1, 1974, and which uses the calendar year as its plan year has a past service liability of $500,000 determined as of January 1, 1976. The plan's actuary uses an interest rate of six percent in determining plan costs. The 40-year schedule requires that $31,350 be charged against the funding standard account each year to amortize this liability. Thus, for each year in the 40-year period comcencing with 1976, the plan's funding standard account is charged with the amount of $31,350. This will require the employers maintaining the plan to make a contribution to the plan of that amount for each year in the 40-year period to generate a credit to the account to offset the charge, unless it is offset by some other credit to the account or the plan becomes fully funded.

In the case of a plan not in existence on January 1, 1974, the plan is required to determine past service liability as of the first day of its first plan year. This liability must be amortized by a multiemployer plan in equal annual installments over 40 years (30 years, in the case of a single-employer plan) in the same manner as past service liability is amortized for a plan in existence on January 1, 1974. Each year during the 40-year period, the funding standard account is charged with the amount of past service liability amortized in that year.

In any case where a net increase in benefits under a plan takes place as a result of plan amendments in a year, the unfunded past service liability attributable to the net increase is determined and amortized over a period of 40 years in the case of a multiemployer plan (30 years for a single-employer plan). Each year during the 40-year period, the funding standard account is charged with the amount of the amortization for that year, and the employers are required to make sufficient contributions to offset the charge unless it is offset by another credit or the plan becomes fully funded.

Experience losses

In determining plan funding under an actuarial cost method, the plan's actuary generally makes certain assumptions regarding rates of interest, mortality, disability, salary scale, etc. If on the basis of these assumptions the contributions made to the plan result in unfunded liabilities less than that anticipated by the actuary on the basis of the assumptions, the excess of the expected unfunded liabilities over the actual undered liabilities is called an "experience gain."

On the other hand, if the expected unfunded liabilities fall short of the actual unfunded liabilities, the shortfall is considered an "experience loss." The minimum funding standard requires that an experience loss be amortized in equal annual installments over a period of 20 years (15 years for a single-employer plan) and that the funding standard account be charged with each year's amortization unless the plan becomes fully funded. (Some funding methods do not separately determine gains or losses).

Changes in actuarial assumptions

If the actuarial assumptions used for funding a plan are revised and under the new assumptions the accrued liability of the plan is less than the accrued liability computed under the old assumptions, the decrease in accrued liability is considered a "gain from changes in actuarial assumptions." "Accrued liability" refers to the actuarial present value of projected pension benefits under the plan which will not be funded by future contributions to meet normal cost. On the other hand, if, after the change in assumptions, accrued liability exceeds accrued liability computed under the old assumptions, the excess is considered a "loss from changes in actuarial assumptions." The amount of the loss from changes in actuarial assumptions must be amortized in equal annual installments over a period of 30 years, and the amount of each year's amortization must be charged to the funding standard account unless the plan becomes fully funded.

Waived funding deficiency

If 10 percent or more of the employers contributing to a multiemployer plan are unable to make contributions which will satisfy the minimum funding standard for a year without substantial business hardship, the Internal Revenue Service is permitted to waive all or a portion of the contribution requirements of the minimum funding standard for a plan year if it is determined that requiring the contributions would be adverse to the interests of plan participants in the aggregate. However, the Service is not permitted to grant such a waiver for a plan for more than five plan years in any period of 15 consecutive plan years. The amount of the contribution not required for as a result of the waiver is called a "waiver funding deficiency."

Under the funding standard, the amount of a waived funding deficiency must be amortized in equal annual installments over a period of 15 years commencing with the year first following the year for which the waiver is granted, and the funding standard account must be charged each year with the amount amortized for that year unless the plan becomes fully funded.

Switchback liability

ERISA provides that certain plans may elect to use an alternative minimum funding standard account for any year in lieu of the funding standard account, and prescribes specified annual charges and credits to the alternative account. If it would take a smaller contribution to balance charges and credits in the alternative account than it would take to balance the funding standard account for a plan year, no accumulated funding deficiency is considered to exist for the year if a contribution satisfying the requirements of the alternative account is made. During years for which contributions are made under the alternative account, an excess of charges over credits may build up in the funding standard account. If the plan later switches back from the alternative account to the funding standard account, this excess of charges over credits must be amortized over a period of five plan years. This amount is known as a "switchback liability."

Credits to funding standard account

Employer contributions

Each plan year, the funding standard account is credited with the amount considered contributed to a plan by employers maintaining the plan for the year. This includes contributions made during the year as well as contributions made on account of the year up to two and one-half months after the close of the year. (IRS can extend the period for an additional six months.)

Past service liability

If plan amendments in a year result in a net decrease in past service liability, the amount of the decrease must be amortized in equal annual installments over a period of 40 years, and each year's amortization during the 40-year period (30 years for a single-employer plan) must be credited to the funding standard account unless the plan becomes fully funded. These credits will help offset charges to the account and will decrease otherwise required contributions to the plan.

Experience gains

If a net experience gain is determined in a plan year, the gain must be amortized in equal annual installments over a period of 20 years (15 years for a single employer plan), and the amount amortized each year must be credited to the funding standard account unless the plan becomes fully funded. These credits also offset charges to the account and thus decrease contribution requirements.

Changes in actuarial assumptions

If a change in actuarial assumptions results in a gain because of a decrease in plan accrued liability under the new assumptions, the gain must be amortized in equal annual installments over a period of 30 years. The amount amortized each year must be credited to the funding standard account unless the plan becomes fully funded and will reduce plan contributions otherwise required for the year.

Switchback liability

When a plan switches back from the alternative minimum funding standard account to the funding standard account, the funding standard account is credited with the excess of charges over credits which have built up in that account. If this were not done, the entire excess would have to be offset by a contribution (or other credit) to the account in the year of the switchback to prevent an accumulated funding deficiency.

Extension of amortization periods

The Internal Revenue Service is permitted to extend for up to 10 years the period for amortizing any unfunded past service liability under a multiemployer plan.[1] If such an extension is granted, the period over which the funding standard account is charged with amortization of the liability is similarly extended. Before granting such an extension, the Service must determine that (1) the extension will carry out the purposes of ERISA, (2) the extension will provide adequate protection to plan participants and beneficiaries, and (3) the failure to grant the extension will (a) result in a substantial risk of plan termination or in substantial reduction of pension benefits or compensation, and (b) be adverse to the interests of plan participants in the aggregate.

Explanation of provisions

In general

The bill would modify the periods over which past service liabilities and experience gains and losses under multiemployer plans would be required to be amortized for the purpose of making charges and credits to the funding standard account. In general, the new amortization periods would follow those required of single-employer plans for funding purposes. However, certain transitional rules would be provided under which the present law amortization periods would continue to apply to multiemployer plans in certain circumstances.

In addition, the Secretary of the Treasury would be authorized to prescribe regulations requiring additional charges and credits to the funding standard account to prevent withdrawal liability payments from being unduly reflected as advance funding of plan liabilities.

---

[1] Under Reorganization Plan No. 4 of 1978, referral to the Secretary of Labor may be required.

The bill would also make conforming amendments to the funding rules to take account of changes made in other parts of the bill.

Modification of charges to funding standard account

Past service liability

Under the bill, certain amounts of unfunded past service liability would be amortized in equal annual installments over 30 years for purposes of determining charges to the funding standard account. These would be (1) unfunded past service liability determined as of the first day of the first plan year of a plan not in existence on January 1, 1974, and (2) any net increase in unfunded past service liability arising from plan amendments adopted during a plan year.

Experience losses

Under the bill, a net experience loss would be amortized in equal annual installments over 15 years for purposes of determining charges to the funding standard account.

Modification of credits to funding standard account

Past service liability

Under the bill, any decrease in unfunded past service liability arising from plan amendments adopted during a plan year would be amortized in equal annual installments over 30 years for purposes of determining credits to the funding standard account.

Unlike charges to the funding standard account for amounts of past service liability, in the case of credits for decreases in past service liability, there would be no rule under which a 40 year (in lieu of a 30 year) amortization period would apply to amounts arising after the date the bill is enacted.

Experience gains

Under the bill, a net experience gain would be amortized in equal annual installments over 15 years for purposes of determining credits to the funding standard account.

Prior amortizable amounts

Under the bill, any amortizable amounts described above that exist on the date of enactment would continue to be amortized over their respective previously established periods.

Withdrawal liability

Under the bill, any withdrawal liability payment to a plan for a plan year would be treated as an amount contributed to the plan for the year. Accordingly, it would generate a credit to the funding standard account.

J. Excise Taxes (Sec. 203 of the Bill and Sec. 4971 of the Code)

Present law

Under present law, an employer who maintains a plan to which the ERISA minimum funding standard applies is subject to a two-tier annual nondeductible excise tax on any accumulated funding deficiency under the plan. The initial tax is 5% of the deficiency. If the deficiency is not corrected within a correction period, an additional excise tax equal to 100% of the deficiency is imposed.

Before issuing a notice of deficiency under this provision, the Service is required to notify the Secretary of Labor and afford the Secretary of Labor an opportunity to (1) require the responsible employer to eliminate the deficiency and (2) to comment on the imposition of the tax.

Explanation of provisions

The bill would conform the penalty excise tax provisions relating to the ERISA funding standard to the plan reorganization provisions of the bill by changing the accumulated funding deficiency of a plan in reorganization (the amount to which the excise tax applies) to the reorganization deficiency computed under the bill. The bill would also provide that in the case of a multiemployer plan in reorganization, the notice issued by the Internal Revenue Service to the Secretary of Labor with respect to a notice of deficiency for a tax on an accumulated funding deficiency, and the opportunity to comment on the imposition of the tax, would be provided to the PBGC.

Effective date

These provisions would apply on the date of enactment.

Revenue effect

It is estimated that this provision would result in a negligible decrease in budget receipts.

K. Deductibility of Employer Liability Payments (Sec. 204 of the Bill and Sec. 404 of the Code)

Present law

Under present law, an employer is allowed a deduction for a contribution to a qualified pension plan for its employees. The deduction is allowed (within limits) in the taxable year for which the contribution is made.[1] Payments of employer liability under the termination insurance program are treated as employer contributions.[2]

Explanation of provision

The bill would allow a deduction for amounts paid by a taxpayer under the employer liability provisions of the termination insurance program without regard to the usual limitations on employer deductions for contributions to a defined benefit pension plan. Special rules are provided which would allow a deduction for employer liability payments to a taxpayer whose liability for the payments arises out of the liability of an employer who is a member of the same controlled group of companies that includes the taxpayer.

Effective date

This provision would be effective upon enactment.

Revenue effect

It is estimated that this provision would decrease budget receipts by less than $5 million annually.

---

[1] See Code sec. 404(a)(1)(A).
[2] See Code sec. 404(g).

L. Minimum Vesting Requirements (Secs. 205 and 303 of the Bill, sec. 411 of the Code, and sec. 203 of ERISA)

Present law

Under present law, benefits under a plan which are vested may be forfeited only in very limited circumstances, (1) in the case of death, (2) where benefits are suspended upon reemployment, (3) in the case of certain retroactive plan amendments which reduce benefits, and (4) in the case of certain withdrawals of mandatory employee contributions. Also, under present law, with certain very limited exceptions, all of a participant's years of service with an employer must be taken into account for vesting purposes.

Explanation of provisions

In general

The bill would provide several circumstances under which vested benefits under a multiemployer plan, which are nonforfeitable under present law, could be forfeited. The bill would also provide that certain of a participant's years of service with an employer, currently taken into account for vesting purposes, could be disregarded in the case of a multiemployer plan. In addition, the bill would conform the vesting provisions of ERISA to changes made in other parts of the bill.

Cessation of contributions under a multiemployer plan

Under the bill, a multiemployer plan would not fail to meet the vesting requirements of ERISA merely because the plan provides for the forfeiture of accrued benefits attributable to service with a participant's employer before the employer was required to contribute to the plan in the event that the employer ceases making contributions to the plan.

Reduction and suspension of benefits

Under the bill, a multiemployer plan would not fail to meet the vesting requirements of ERISA merely because (1) it is amended to reduce accrued benefits, but not below the level of guaranteed benefits, in the event of plan reorganization or plan termination, or (2) benefits payments under the plan, other than basic benefits, are suspended in the event of plan reorganization or plan termination.

Authority to disregard service after withdrawal or plan termination

Under the bill, if an employer withdraws from a multiemployer plan, a participant's years of service with the employer completed after the withdrawal would not have to be taken into account in determining the participant's vested percentage in his accrued benefits under the plan. This rule would apply to partial withdrawals only to the extent permitted in regulations prescribed by the Secretary of the Treasury.

Also, under the bill, if a multiemployer plan terminates for purposes of termination insurance, on employee's years of service completed after the date of termination would not have to be taken into account in determining a participant's vested percentage in his accrual benefits under the plan.

Effective date

This provision would apply on date of enactment.

Revenue effect

It is estimated that this provision will have no effect on budget receipts.

○